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# Fax

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<b>Re:</b>	Application No. 09/711,183 METHOD OF PROVIDING ONLINE INCENTIVES	<b>CC:</b>	

☒ **Urgent**    ☐ **For Review**    ☐ **Please Comment**    ☒ **Please Reply**    ☐ **Please Recycle**

Dear Mr. Duran:

I write to you today regarding the Notice of Allowance and Fee(s) Due communication for Application No. 09/711,183 having invention the title METHOD OF PROVIDING ONLINE INCENTIVES and which was mailed on January 04, 2007.

The notice indicates claims 1-19 as being allowed. However, I would like your help in understanding the status of claim 21. In reviewing the Decision on Appeal communication with Mailing Date 09/28/2006 and the Office Action Summary with Mailing Date 08/09/2004, I believe claim 21 is also allowed. I base this assertion on the following:

- a) In the Office Action Summary with mailing date 08/09/2004, claims 1-18, 20 and 22 are rejected under 35 U.S.C 101 as being unpatentable because they describe only non-functional data (see page 5). However, in the body of the Decision on Appeal (mailing date 09/28/2006), the Patent Judges do not sustain the 101 rejection to claims 1-18 but they do sustain the 101 rejection to claims 20 and 22. (page 4). Therefore, it would appear claim 21 is acceptable. Additionally, in the summary of the Decision on Appeal, the Patent Judges both reverse and sustain the 101 rejection for claim 21. I do not believe a rejection can be both reversed and sustained. Based on the text in the body of the Decision on Appeal, the sustained rejections only apply to "20 and 22"--not "20 to 22" (page 4). Again, claim 21 seems acceptable.
- b) In the Office Action Summary with mailing date 08/09/2004, claim 21 (along with 1, 7-11, 13-17, 19, 20, 22) was rejected under 35 U.S.C 103 as being unpatentable under Hammons prior art (see page 6). In the body of the Decision on Appeal, the Patent Judges do not sustain the 103 rejection to claims 1, 7-11, 13-17, or 19 but they do sustain the rejection to claims 20 and 22 because "each of these claims recites only non-descriptive subject matter" (page 6). There is no mention in the body of the Decision on Appeal about the status of claim 21. However,

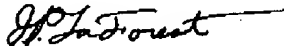
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claim 21 has always described more functional subject matter than do 20 and 22. In fact, the descriptive material in claim 21 is quite similar to the language the Judges use at the bottom of page 5 of their decision explaining why Hammons is not a valid basis for rejection: "... Hammons does not disclose that bid activity is added to the profile. In addition, Hammons does not describe generating an incentive based on the consumer profile or choosing one unsold item from an inventory based on the information in the consumer profile ..." Therefore, in view of the incorrect wording (should be 20 and 22; not 20 to 22) and Judges explanation regarding Hammons not being a valid basis for rejection, claim 21 seems acceptable.

If, after reviewing the documents, you agree with my opinion, I would appreciate your issuing an Examiner's Amendment such that claim 21 is allowed.

I will contact you by phone to discuss this matter but thought a written explanation might be useful. In the meantime, if you reach a decision prior to you and I discussing the matter by phone, it would be appreciated if you could contact me at the number below. Also, if you could send a fax regarding your interpretation/decision about claim 21 it would be most helpful. [Fax = (734) 298-6003]

Kind regards,



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